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6-10-1960

SUBJECT: Congressional Action Relating to a Joint Committee on Foreign Intelligence

REFERENCE: A. Memo for NSC from Executive Secretary, same subject, dated January 11, 1956

B. NSC Actions Nos. 1512 and 2215-c

C. Memo for NSC from Executive Secretary, same subject, dated 10 November 1960

The purpose of this memorandum is to summarize congressional activity in regard to a Joint Committee on Foreign Intelligence in the last three Congresses and to review other possible considerations pertinent to the subject.

I. CONGRESSIONAL ACTION 1956 - 1960

1. Subsequent to the report to the National Security Council on the subject of joint committees for intelligence (Reference A), the Senate Rules Committee reported out favorably Senate Con. Res. 2, proposing a Joint Committee, with Senator Hayden filing a minority view. The Committee report is Attachment No. 1. There was considerable debate on the Senate floor concerning the resolution and ultimately it was defeated by a roll call vote of 59 to 27. Although the resolution had 35 co-sponsors, on the final vote ten of the co-sponsors voted against the creation of a Joint Committee. Senator Mansfield is reported to have said he was beaten on this by the professionals but that he would not make this mistake again. It is of interest that he did not introduce similar measures in the 85th or 86th Congress.

2. In the 85th Congress, 22 measures were introduced (one in the Senate and 21 in the House of Representatives) similar to Senate Con. Res. 2 of the 84th Congress. However, none of these measures was reported out of Committee and, consequently, no floor debate was held. A list of sponsors is attached as Attachment No. 2.

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3. In the 86th Congress, 21 measures were introduced similar to Senate Con. Res. 2 of the 84th Congress, one in the Senate and 20 in the House of Representatives. A list of sponsors is attached as Attachment No. 3.

4. Early in the first session of the 86th Congress, considerable pressure developed on the House Rules Committee to report out favorably a measure for a Joint Committee on Intelligence. There were conferences between Mr. Howard Smith, Chairman of the House Rules Committee; the Speaker of the House, Mr. Sam Rayburn; Mr. Carl Vinson, Chairman of the House Armed Services Committee; and Mr. Kilday, ranking majority member of House Armed Services Committee. Clearly to relieve some of this pressure, it was decided to reconstitute the CIA Subcommittee of House Armed Services with a membership of less seniority designed for the purpose of giving greater attention to CIA. Previously the Subcommittee was chaired by the chairman of the full committee and the subcommittee members were automatically chosen on the basis of ranking on the full committee. It was stated to be the purpose of the subcommittee that it would undertake a detailed and thorough review of the Agency and would meet with the Agency at least once a month. This new subcommittee was put under the chairmanship of Paul J. Kilday and included the following members:

Charles E. Bennett (D., Fla.)	James E. Van Zandt (R., Pa.)
George Huddleston, Jr. (D., Ala.)	Bob Wilson (R., Calif.)
A. Paul Kitchin (D., N. C.)	Frank C. Gomers, Jr. (R., N. J.)
Carl Vinson (D., Ga.) ex officio member	
Leslie C. Arends (R., Ill.) ex officio member	

5. There was no formal action taken in the first session of the 86th Congress on any of the measures for a Joint Committee. However, in the second session, it was reported in the press on May 13, 1960 that the House Rules Committee had considered action on the numerous resolutions pending before it for a Joint Committee on Intelligence but decided to take no action "because the time to consider them seemed inopportune."

6. Representative Clement J. Zablocki (D., Wis.) is one of the members who has pushed for the creation of a Joint Committee. He has stated that he would await the report of the Kilday Subcommittee to determine whether further action would be necessary. In reviewing the

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Report of the Activities of the House Committee on Armed Services, 86th Congress, the CIA Subcommittee and its membership is listed. However, there is no mention in the text of any specific activities of that Subcommittee although there are brief summaries of activities of other subcommittees.

II. CIA APPEARANCES BEFORE CONGRESSIONAL COMMITTEES

1. There has been a marked increase over the years in the number of appearances that Agency representatives have made before congressional committees. The significant turning point appears to have been the advent of Sputnik I in November 1957. In prior years, Agency appearances have run 8-10 per year and for the last three years, the number of appearances are as indicated below:

1958	21
1959	28
1960	18

The specific committees before which Agency representatives appeared during these three years is attached as Attachment No. 4.

2. The above figures are inclusive of appearances before CIA subcommittees but it is believed pertinent to list these separately for closer examination.

	<u>1958</u>	<u>1959</u>	<u>1960</u>
CIA Subcommittee of Senate Armed Services	2	2	0
CIA Subcommittee of Senate Appropriations *	2	1	0
CIA Subcommittee of House Armed Services	2	5	2
CIA Subcommittee of House Appropriations	<u>2</u>	<u>1</u>	<u>2</u>
	<u>3</u>	<u>9</u>	<u>4</u>

(* None of these appearances dealt with the Agency budget or justification of the budget request.)

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III. CIA SUBCOMMITTEE OF HOUSE ARMED SERVICES

1. The activities of this Subcommittee are worth further examination. Immediately in the first session of the 86th Congress, the Subcommittee conducted a series of four hearings during which they were given detailed briefings on the operations and activities of the Agency. Following these hearings, the Subcommittee inquired into the matter of General Accounting Office audit of CIA vouchered funds. The purpose of this inquiry was to determine if GAO applied the same type of comprehensive audit to our vouchered funds as they did to the funds of other agencies. Once having determined that this was not the case, an effort was launched to determine if in fact GAO could perform a comprehensive audit of the vouchered funds of the Agency and a series of discussions were started between the Agency and GAO. A new site auditor was assigned by GAO, who is currently studying this matter which is somewhat complicated due to the fact that some offices and components of the Agency handle both covert and overt activities utilizing Confidential Funds as well as vouchered funds.

2. It is also of interest that Mr. Kilday personally has been most helpful in several situations. For example, in one case another congressman threatened on behalf of a constituent to discuss on the floor of the House certain aspects of a CIA proprietary dealing with another Government agency and in fact the congressman initiated correspondence on this subject. Mr. Kilday immediately took action to protect our interests, including standing by on the floor to cope with the congressman if he should have brought up the subject. His guidance has been sought in other cases and he has always displayed a willingness to help where he can. Also, we have on occasion informed him of certain potential sensitive situations which might have resulted in press attention.

3. In connection with the U-2 affair, it was Mr. Cannon who went on the floor to point out that the House Appropriations Committee had recommended the money for this program and that Congress had approved the appropriations bill. Mr. Cannon also stated that although all the members of the House had not been informed, the mission was part of an established program with which the subcommittee was familiar and of which it had been fully apprised during this and previous sessions. There have been indications that Mr. Vinson was disturbed that the Kilday

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Subcommittee had not been briefed on this project. Mr. Vinson is reported to have said that the Agency was choosing to reveal only what it wanted to. Further, Mr. Vinson is said to have opined that the only real purpose being served by the CIA Subcommittee was to avoid a Joint Committee. (Mr. Vinson was vigorous in his opposition to the Joint Committee concept in 1956.) Also, it is reported that Mr. Kilday tends to regard the CIA Subcommittee as somewhat of a chore and that he had no strong feeling about retaining jurisdiction over CIA in Armed Services. However, very recently he indicated he was strongly opposed to a Joint Committee on Foreign Intelligence.

IV. LEGISLATION AFFECTING CIA

1. There has been little occasion for the Agency to seek amendments to the National Security Act of 1947 which established the Agency and the enabling Act, P. L. 110, of 1949. The National Security Act was amended in 1953 at our request in order to make statutory provision for the position of Deputy Director of Central Intelligence and also authorizing the President to appoint the Deputy Director from among commissioned officers of the armed services whether in an active or retired status. Also in 1953, P. L. 110 was amended to permit the Agency to employ not more than fifteen retired officers of the armed services. This gave the Agency only a limited exemption from the dual compensation statutes in that the retired officers so employed are required to elect to receive either the compensation of the Agency position or their retired pay, but not both. These two legislative items were considered by the Senate and House Armed Services Committees.

a. In 1954, section 9 of P. L. 110 was repealed. Section 9 had permitted the Director to fix compensation for three positions in the professional and scientific field at salaries then in excess of the classified schedules. The amounts the Director could fix were stated amounts and various pay increase legislation had overtaken these amounts. The section was no longer necessary and in fact was considered to be a limiting factor on compensation for these positions.

2. Other legislative needs of the Agency have been met through legislation considered by committees of the Congress other than Armed Services. In 1958 the Agency initiated efforts to have the Atomic Energy Act of 1954 amended to permit agencies other than the Atomic Energy

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Commission to transmit Restricted Data to foreign countries as otherwise authorized by law. This legislation, P. L. 85-479, was referred to the Joint Committee on Atomic Energy which held hearings

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3. Other legislation where CIA was directly affected included items of Government-wide applicability. While these were still under consideration in Committee the Agency made representations to the committees for amendments to meet Agency requirements. An example would be the Government Employees Training Act of 1959 which provided training authorities for the Government generally and repealed the specific training authority contained in section 4 of P. L. 110. Exemptions for the Agency were included at our request. In similar fashion the Overseas Differentials and Allowances Act of 1960 attempted to make generally uniform the allowances available to civilian Government employees abroad. Extensive cooperation was achieved with the House Post Office and Civil Service Committee in amending various provisions of P. L. 110 to bring them into conformity with the general language and that of the Foreign Service Act. Other Acts in which we have been interested would include P. L. 85-217 which made permanent the temporary wartime Missing Persons Act; P. L. 86-382, the Government Employees Health Benefits Act which required some amendments in the drafting stage to permit the Agency to continue its own health benefits insurance plan; P. L. 83-763, the Government Employee Fringe Benefits bill of 1954 which initially established the Federal Employees Group Life Insurance program and among its miscellaneous provisions exempted CIA from the application of the Performance Rating Act of 1950. It was also the vehicle to repeal section 9 of P. L. 110, mentioned above, which dealt with three scientific and technical positions.

4. In summary since the original Acts of 1947 and 1949, only two items of legislation have been initiated by the Agency for handling by the Armed Services Committees. Most legislative items initiated by the Agency have been handled through other committees. The greater bulk

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of legislation in the Congress which affects the Agency originates from other sources and is considered in committees other than Armed Services. Agency efforts in this regard are centered on working with the appropriate committees to which the various proposals are referred in order to safeguard security and to protect existing Agency authorities.

V. DISCUSSION OF GENERAL CONSIDERATIONS

1. In addition to the detailed considerations discussed in the report of 6 January 1956, attached to Reference A, it is believed there are additional factors worth consideration. There are four aspects of the problem of establishing proper relations with the Congress in order to inform them and obtain necessary funds which are believed peculiar to the Agency.

a. Security. CIA is the only agency where security applies to such basic matters as personnel, budget, organization, and expenditures. This tends to breed suspicion and distrust on the part of congressmen who are not informed. The security problem, therefore, is different in nature as well as degree from that of other Executive agencies.

b. Finished Intelligence. The end product of the Agency is finished intelligence for the policymakers in the Executive Branch. Sound arguments can be made that such finished intelligence is the exclusive property of the President in view of his responsibility for the conduct of foreign affairs. A serious question is raised whether the Congress has a legitimate interest in finished intelligence except to determine whether a valuable return is received for the funds appropriated. Since intelligence is only one factor in policy decisions, providing Congress with finished intelligence alone could well lead to serious political difficulties in which the Agency would be caught in the middle between the Executive and Legislative Branches.

c. Jurisdiction. Most agencies can deal with the Congress representing their entire functional responsibilities whereas CIA is a focal point of the intelligence community comprised of components of other departments and agencies which have their own direct responsibility to the Congress.

A formidable jurisdictional problem is thus presented and while it is one for the Congress to resolve, it is pertinent to our consideration of relations with the Congress.

d. Covert Operations. In addition to the intelligence mission, the Agency is charged with the conduct of covert operations. Such operations are carried out in accordance with policy directives from appropriate Executive Branch elements. In possible congressional review of such activities there would be involved policy decisions for which CIA does not have responsibility.

2. It is believed desirable to attempt to appraise the relative merits of handling CIA congressional relations under the existing system and under a Joint Committee system utilizing the above four factors.

a. Security. Under the existing system, security of the CIA subcommittees has been excellent, but it cannot be assumed that a Joint Committee would be less secure and under the Mansfield type resolution the membership would be comprised solely of members of our subcommittees. (The staff problem will be discussed later.) The establishment of a Joint Committee might have some adverse affect on relations with foreign intelligence services, but probably this would be of short duration as they could be brought to understand that fundamentally nothing had been changed from the security standpoint.

b. Finished Intelligence. On the question of producing finished intelligence on demand from the Congress, there would seem to be little difference in the fundamental problem between our present subcommittee system and a Joint Committee. Our present subcommittees have not raised this issue although they could at any time. There is somewhat more likelihood that the Joint Committee would immediately raise the issue but the issue is the same under either system. In fact, a Joint Committee might tend to preclude other committees such as Foreign Relations from requesting the material which could happen under the present system.

c. Jurisdiction. There are two sides to the question of jurisdiction. On the one hand is the question of extent of jurisdiction over intelligence matters which could be claimed by the Joint Committee. The extent of asserted jurisdiction by a Joint Committee over the intelligence activities of other agencies which have responsibilities to other committees is a matter of conjecture and concern. On the other hand there is the question of how many committees properly can assert jurisdiction over the Agency at the present time. For example, a subcommittee of House Foreign Affairs on State Department Organization and Foreign Operations lists one of its responsibilities in the Legislative Calendar as ". . . liaison with Central Intelligence Agency . . ." The House Committee on Government Operations has indicated it could assert jurisdiction, specifically under its Subcommittee for Foreign Operations and Monetary Affairs, chaired by Representative Porter Hardy. Also, legislation affecting CIA personnel might well be claimed by the Post Office and Civil Service Committees, whereas a Joint Committee could probably assert exclusive jurisdiction over the Agency in all matters except appropriations. Generally we have not been subject to any serious jurisdictional difficulties under the present system, but it is likely that a Joint Committee would tend to cause jurisdictional questions to be raised.

d. Covert Operations. On the question of covert operations, again there seems to be little basic difference in dealing with our subcommittees or with a Joint Committee. However, the existence of a Joint Committee would tend to bring the issue into focus. So far the subcommittees have not seriously considered policies under which CIA conducts its covert activities. A Joint Committee could almost certainly be expected to study such problems more carefully and might well be critical of policies, instructions, or particularly limitations put on by State or Defense. The problem of such policy guidance is delicate enough without having a third party, particularly a congressional group, enter the debate. So, on balance, the subcommittee system may be preferable from this point of view, although there is nothing to prevent the problem from arising with them also.

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3. The present subcommittees have not moved actively to dispel what many believe to be a growing distrust and suspicion of the Agency within the Congress. The level of lack of knowledge of the Agency, its activities and its relations with Congress is illustrated by the fact that certain senior congressmen on the Armed Services Committee were not aware that there was a CIA Subcommittee. The publicity attendant upon the establishment of a Joint Committee would tend to lessen some of the suspicions as would the reports which presumably would be forthcoming. It is also likely that the Joint Committee would be of some assistance in guiding through the congressional mill the relatively few items of needed legislation.

4. The most serious problem and the most difficult to assess concerns the fundamental constitutional question of the relationship between the President and the Congress, particularly with regard to the President's function in the conduct of foreign affairs. This point is discussed in more detail in the DCI memorandum of 6 January 1956 to the National Security Council. A Joint Committee in all likelihood would tend to bring these issues into sharper focus although it is impossible to predict the approach which would be taken by a Joint Committee. However, it is true that the existing subcommittees could raise the same issues. Since they have not, the constitutional question remains a distinct negative factor in assessing the desirability of a Joint Committee.

5. The membership on a Joint Committee raises many doubts. The various measures proposing a Joint Committee have specified determination of membership in different ways. In some cases it is left open except for the usual relationship between majority and minority parties, and in all likelihood seniority rules would apply. Under this arrangement there would be increased dangers arising from the inflexible nature of selection. In the present system, the selection of membership on subcommittees is handled more informally and there have been no serious problems. Under the Mansfield type of resolution the membership includes only the members of the existing CIA subcommittees so no additional membership problem is raised. However, it does raise the question of responsibility to additional committees. The Mansfield type resolution does not eliminate supervision of the Armed Services Committees but simply imposes the Joint Committee on top of the existing system, thus increasing our burden.

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6. Some of the above problems are further emphasized by the fact that a Joint Committee would have its own staff. Presently the staffs working with the subcommittees have as much as they can handle in the way of work for other defense activities and tend to leave CIA alone. A staff for a Joint Committee, however, even if it were one man, would have but a small portion of its time taken up with the few legislative problems this Agency has. There is little doubt that the staff's time would, therefore, be devoted to informing itself on intelligence activities and inquiring into substantive matters. The staff in turn would promote the interest of committee members, and we could expect a far more active give and take than exists between the Agency and the subcommittees. This would be time consuming and the probable detriments would tend to outweigh the benefits, as the increased security exposure and the tendency of the Joint Committee to interfere would probably have more effect than any support we might wish the Committee to lend. However, the problem of the staff is not insoluble and the selection thereof could probably be worked out by mutual agreement between the chairman and the Director. The staff problem is additionally unique in that to do their job properly they would gain access to the most sensitive of clandestine activities on an across-the-board basis, whereas even within the Agency these activities are compartmented and very few people in the Agency have full access. The normal turnover of staff people possessing such broad knowledge of Agency activities adds to the security problem.

7. Certain of the advantages claimed for a Joint Committee could be accomplished under our existing subcommittee system. A more careful review of Agency activities can be accomplished by our present subcommittees, whereas in the past there has not been a thorough review on an annual basis. Some of the members of our subcommittees have conceded that possibly they have not lived up to their responsibilities in this respect. A review of Agency activities (not simply a briefing on world affairs) accompanied by a statement or report issued to the membership of the Congress as a whole that a review has been conducted would go a long way to alleviate some of the pressures and meeting the stated objectives of a Joint Committee.

Atts. 4

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